

**STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION**

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|---|---|------------------|
| <b>Illinois Commerce Commission</b>           | ) |                  |
| <b>On Its Own Motion</b>                      | ) |                  |
| <b>Notice of Inquiry into the need for an</b> | ) | <b>04-NOI-01</b> |
| <b>expedited hearings process for</b>         | ) |                  |
| <b>complaints against an alternative gas</b>  | ) |                  |
| <b>supplier where the complainant seeks</b>   | ) |                  |
| <b>a cease and desist order under</b>         | ) |                  |
| <b>Section 19-120 of the Public Utilities</b> | ) |                  |
| <b>Act</b>                                    | ) |                  |

**REPLY COMMENTS OF USESC AND IGS  
IN RESPONSE TO NOTICE OF INQUIRY**

U.S. Energy Savings Corporation (“USESC”) and Interstate Gas Supply of Illinois, Inc. (“IGS”) (collectively, the “Retail Suppliers”), by their attorneys Piper Rudnick LLP, hereby respectfully submit the following reply comments (“Reply”) submitted regarding the Notice of Inquiry (“NOI”) request of the Illinois Commerce Commission (“Commission”) on September 14, 2004. In providing the instant Reply, recognizing that this is a preliminary process involving a range of interrelated and in some respects novel issues, the Retail Suppliers reiterate that they expressly reserve the right to take additional or different positions both in the context of this NOI proceeding and in any subsequent docketed proceeding.

**INTRODUCTION**

As explained in the Initial Comments of the Retail Suppliers, the Commission can minimize the circumstances under which cease and desist complaints would need to be brought by providing clear regulations to govern the competitive gas markets, and by articulating unambiguous standards for determining if and when initiating an expedited proceeding is appropriate.

With that backdrop, the Retail Suppliers wish to reply to three (3) specific comments made by the Citizens Utility Board (“CUB”) in the comments it submitted. Specifically, the Retail Suppliers do not agree with (1) the CUB’s suggestion that the Commission needs to promulgate expedited proceedings for all cease and desist proceedings, (2) the unsupported implication by the CUB that most alternative gas suppliers (“AGS”) in the Illinois natural gas market use questionable marketing tactics to attract customers; and (3) the unsupported assertion by the CUB that AGSs have not provided valuable products and services to Illinois customers.

The Commission should adopt a deliberate and procedurally clear process that respects the due process rights of both complainants and those against whom complaints are brought. In doing so, the Commission would ensure that complaints are handled efficiently, and therefore in an expedited manner. The Commission should use the September 14 comments and the instant reply submissions as the basis for a one-day workshop to further explore the issues at hand.

### **REPLY**

**1. The CUB does not address why the existing provisions of the Public Utilities Act (“Act”) and Commission rules of practice do not provide an adequate means by which a complainant may receive an expedited proceeding.** While the CUB provides examples of the types of proceedings which could benefit from an expedited procedure, it does not provide an explanation as to why the Commission cannot use its discretion on a case-by-case basis to determine whether it should expedite a particular complaint. (*See* CUB comments at 2.) As highlighted by Nicor Illinois Gas Company (“Nicor”) and Peoples Energy Services (“PES”) in their respective comments, the Commission’s Administrative Law Judges (“ALJs”) are not precluded from granting requests for expedited schedules in proceedings. (*See* Nicor comments

at 2; PES comments at 3.) Given that a procedure for receiving expedited treatment in a proceeding already exists, it appears that the CUB's true concern resides in the adequacy of the standards under which an expedited schedule is evaluated and granted rather than the mere promulgation of rules which provide for a speedy proceeding.

The Retail Suppliers similarly would encourage the Commission to develop clear standards to ensure that proceedings can be expedited, when necessary. However, the Commission should not establish a blanket rule that would provide for expedited treatment of all proceedings in which a party requests the Commission to issue a cease and desist order. Instead, the Commission should promulgate clear standards by which an ALJ can judge, and parties can be made aware, whether a proceeding should be considered for expedited treatment. The CUB has taken a critical first step in the development of these standards by providing an outline of initial queries in its "list of factors." (*See* CUB comments at 4.) The CUB's factors for expediting a proceeding question harms to parties, inequity to competitors, complexity of the issues and proximity of the complaint to the heating season. (*See id.*) Providing clear evaluative standards by which a motion for expedited treatment will be judged should be founded upon queries such as these. Developing a clear path of inquiry and evaluation of potentially expedited proceedings should assist in reducing the uncertainty of an open-ended proceeding for all parties while ensuring that the Commission retains some discretion in its case scheduling.

**2. The CUB's comments inappropriately imputed dishonest and disingenuous motivations to all Illinois AGSs.** The CUB asserts without support in its comments that "there is no evidence" that customer choice in Illinois offers customers lower prices. (*See id.*) Contrary to the CUB's unsupported position, the Retail Suppliers can attest that customers in Illinois have in fact received significant benefits from competition. Further, the CUB's opinions (and those of

any other market participant) as to the general success of the competitive gas market in Illinois is irrelevant and beyond the scope of this NOI proceeding. Apart from the inappropriate placement of such an inquiry in this forum, the CUB provides absolutely no support for its odd allegation that no savings have been obtained by customers in Illinois. Additionally, the CUB's comments appear to imply that most of the AGSs in Illinois "use questionable marketing practices." (*Id.*) To the extent that specific problems can be identified, they should be addressed; broad-sweeping unsubstantiated assertions are counterproductive and have no place in the instant proceeding. While the Retail Suppliers appreciate the CUB's role as watchdog for Illinois consumers, it should respect the nature and scope of the instant inquiry.

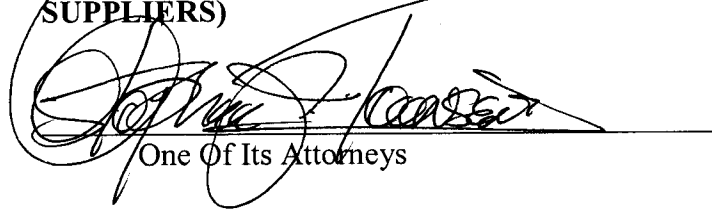
### **CONCLUSION**

Clearly articulated "rules of the game" will minimize the risk of inadvertent missteps by competitors. The Retail Suppliers support the kind of reasoned queries and standards advocated by the CUB for evaluating whether an expedited proceeding is appropriate. Establishing such standards will ensure that equitable and efficient proceedings take place without the need for a rigid determination that all cease and desist proceedings be handled in an expedited manner. The Retail Suppliers strongly encourage the Commission to initiate a workshop process to further discuss the establishment of clear procedural standards for assessing the need for expedited proceedings.

Respectfully submitted,

**INTERSTATE GAS SUPPLY OF ILLINOIS, INC.  
U.S. ENERGY SAVINGS CORPORATION  
(COLLECTIVELY, AS THE RETAIL  
SUPPLIERS)**

By:



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